

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 85027-001

v

U. S. Health and Life Insurance Company
Respondent

Issued and entered
this 13th day of November 2007
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 11, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on September 18, 2007.

The Commissioner notified U. S. Health and Life Insurance Company (USHL) of the external review and requested the information used in making its adverse determination.

Because this case involves medical issues, the Commissioner assigned it to an independent review organization (IRO) which provided its analysis and recommendation to the Commissioner on October 16, 2007.

II FACTUAL BACKGROUND

The Petitioner's health care benefits are defined in the certificate of group insurance coverage issued by USHL (the certificate). His coverage was effective December 1, 2006.

The Petitioner first saw XXXXX, MD, on September 25, 2006, for an abnormality of his left testicle, low testosterone, and low back pain. Laboratory tests were ordered and a follow-up evaluation was scheduled. USHL denied coverage for subsequent doctor visits and services from December 3, 2006, through February 12, 2007, on the basis that they were treatment for infertility and therefore excluded.

The Petitioner appealed the denial through USHL's internal grievance process. Humana reviewed the claims but maintained its denial and issued a final adverse determination on August 12, 2007.

III ISSUE

Is USHL correct in denying coverage for the Petitioner's office visits and services provided from December 3, 2006 through February 12, 2007?

IV ANALYSIS

Petitioner's Argument

The Petitioner states in his request for external review that his initial blood-work was billed with an incorrect diagnosis code and all claims following were rejected. He says he was referred to XXXXX, MD, after the results of a testicular ultrasound indicated a problem with his left varicocele. He further says that the follow-up appointments and varicocelectomy were to relieve left scrotal pain. He asserts that he was never treated for infertility.

The Petitioner believes his doctor's services and treatment were not for infertility and therefore USHL should provide coverage for the services he received.

U.S. Health and Life Insurance Company's Argument

In its adverse determination, USHL says that it sent medical records from Drs. XXXXX to an independent review organization and based on that review it affirmed its denial of benefits for certain services and treatment rendered to the Petitioner from December 2006 through February 2007. USHL says the Petitioner's medical records show that he did not have pain prior to his first visit and that correction of a varicocele is a standard treatment for infertility.

USHL says that the certificate contains this exclusion for infertility treatment:

Other limitations and exclusions

Unless specifically stated otherwise, no benefits will be provided for or on account of the following items-

* * *

- In-vitro fertilization; any medical or surgical treatment of infertility; infertility evaluations; infertility services; sex change services; or reversal of elective sterilization.

USHL argues that the Petitioner's services were for the treatment of infertility and therefore are not eligible for coverage.

Commissioner's Analysis

In reviewing adverse determinations that involve medical issues, the Commissioner requests a review and recommendation from an IRO. In this case the IRO reviewer was certified by the American Board of Urology; is a member of the American Urological Association, the Society for Urodynamics and Female Urology, the American Urogynecologic Society, the International Continence Society, and the Society for University Urologists; is published in peer reviewed medical literature; and is in active practice. It is the opinion of the IRO reviewer that USHL's denial be upheld.

The IRO reviewer explained that, based on the records submitted for the period September 25, 2006, to February 2, 2007, the Petitioner's treatment and eventual varicocelectomy was for infertility. The IRO reviewer observed that the Petitioner was seen on September 25, 2006, by Dr. XXXXX as a new patient with an abnormality of his left testicle that

had been present for 10 years. He denied any pain or edema in that area. The IRO reviewer noted that he had no other urologic complaints with the exception of decreased libido and low back pain. The IRO reviewer also noted that on his first two visits he made no reference to pain or discomfort.

According to the IRO reviewer, inconsistencies in the record indicate that the varicocelelectomy was done for infertility and not for pain: (1) the Petitioner has had the varicocele for ten years and there was no documentation of a change in the ipsilateral testicular size; and (2) there was inconsistent documentation about the size of the varicocele.

The IRO reviewer further said:

An infertile adult male with a varicocele should be considered a candidate for varicocele repair if all of the following four (4) conditions are met:

- (1) if a couple has known infertility;
- (2) the female partner has normal fertility or a potential treatable cause of infertility;
- (3) if the varicocele is palpable on physical examination or it is suspected that the varicocele is noted by ultrasound examination;
- or
- (4) the male partner has an abnormal semen analysis.

* * *

The only other indications for varicocelelectomy other than infertility would be intractable pain which [the Petitioner] did not demonstrate.

It was the IRO reviewer's conclusion that the Petitioner received medical advice and treatment for infertility.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner concurs with the findings of the IRO reviewer that the Petitioner's services from December 3 2006, to February 12, 2007, were for infertility and therefore are excluded from coverage under the terms and conditions of the certificate.

**V
ORDER**

The Commissioner upholds U. S. Health and Life Insurance Company's August 12, 2007, final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.